

Kentucky Department of Education's ESEA Waiver White Paper

What Is the ESEA Waiver and Why Is It Important to Kentucky?

On January 8, 2002, the reauthorization of the *Elementary and Secondary Education Act* of 1965 (ESEA), often known as the No Child Left Behind (NCLB) Act, went into effect. Since that time, states have been operating under NCLB, even as the intended time for reauthorization of the law by Congress (2007) has come and gone and the urgency for reauthorization continues to mount. Given this delay in reauthorization, President Obama announced the opportunity for states to seek relief from NCLB through an ESEA flexibility package (commonly referred to as the ESEA waiver). The Council of Chief State School Officers (CCSSO) worked closely with states as they applied for this flexibility, and has continued to work with states as they implement their new accountability systems. While CCSSO and its members prefer to redesign accountability through the reauthorization of ESEA by Congress, CCSSO has been supportive of the strong leadership from states as they put forth comprehensive reform plans that move toward the goal of providing every student with a high-quality education that prepares them to succeed in their pursuit of college- and/or career-readiness. Rather than backing down from accountability, states have used this opportunity to build upon the positive aspects of NCLB and move beyond the law to propose new accountability systems that are more comprehensive and rigorous and are better designed to support continuous improvement for all districts, students, and schools.

I. No Child Left Behind Act – A brief overview

In the years prior to NCLB, the country had been increasingly moving toward a standards-based approach to reform and, with the passage of NCLB, standards-based reform was solidified as a national priority, establishing broader, more rigid requirements for state standards-based reform. The basic premise of the law is that states are required to set annual targets in English/language arts and mathematics that would eventually build to 100 percent proficiency in these areas for all students by 2014. Annual targets are set for school and district achievement overall, as well as specific targets for a set of subgroups. If the annual targets are not met, either overall or for any of the subgroups, there are pre-determined interventions, with increasing severity, intended to support schools in achieving these targets, regardless of why the school or district failed to meet its targets. While there is flexibility in how targets are set, there is less flexibility in what happens when targets are not met. Additionally, the system requires that all targets are met or the school or district is labeled as failing. Schools and districts are required to report their progress toward these goals publicly each year so that the public can track the performance of any school in the nation. Schools and districts report this data for both the overall achievement level, as well as each individual subgroup, to ensure that the overall progress a school or district is making does not unintentionally mask low performance of any subgroups.

NCLB advanced accountability in important ways. It set the standard for high expectations for all students, heightened attention on the disaggregation of data, and helped to ensure that all students are recognized and are counted for accountability purposes.

II. Why do we need something different for Kentucky?

While it is generally agreed that NCLB had some positive impacts, the law overall no longer serves the needs of students. Imagine working in an environment where, in spite of all that a person has learned over the past ten years and all of the advances in technology that inform the work, the person is left operating under an outdated set of rules that limit the ability to apply new knowledge to improve the system.

Under NCLB, a determination is made based on a pass/fail analysis that provides little information to schools, districts, parents, and stakeholders about why a school or district is failing and how to best identify the root causes of the problem to support improvement. The determination is based strictly on whether students are meeting limited targets, which vary significantly from state to state depending on a state's standards (and which may not reflect expectations aligned to college- and career-readiness goals) and performance goals, and disregards whether schools are making progress. Reporting systems limit what factors can be considered (and how) in making accountability determinations. In addition, under NCLB the interventions that are required are pre-determined and do not allow for as much flexibility and nuance as might be needed to adequately address schools' and districts' unique challenges. Further, while providing a spotlight on the lowest-performing schools and districts (whether the low performance is persistent or not and/or across the board or between certain student groups), the NCLB system fails to provide the information, tools, and capacity to effectively address these issues.

As a result, states were operating under an accountability system that no longer has meaning and was increasingly disregarded by many states.

III. What is ESEA flexibility (also referred to as ESEA waiver)?

On September 23, 2011, President Obama released the details of the Administration's [ESEA flexibility package](#), which builds on the work done by state education leaders, responds to calls to move beyond current NCLB requirements and supports state efforts to prepare every child for college and career. State ESEA flexibility requests address transitioning students, teachers, and schools to a system aligned with college- and career-ready standards for all students, developing differentiated accountability systems, and undertaking reforms to support effective classroom instruction and school leadership. As of September 12, 2013, 45 states, the District of Columbia, Puerto Rico and the Bureau of Indian Education submitted requests for ESEA flexibility and have applied for a waiver from NCLB setting forth proposals for new accountability systems aligned with CCSSO's Principles and Processes for State Leadership on Next-Generation Accountability Systems found at the following link: http://www.ccsso.org/Resources/Publications/Principles_and_Processes_for_State_Leadership_on_Next-Generation_Accountability_Systems.html. Of those, 41 (including Kentucky) and the District of Columbia have already been approved and are implementing new systems of accountability.

IV. Why is ESEA flexibility important to Kentucky?

It is critically important that we prepare an educated workforce with the skills and knowledge to ensure that the United States remains economically competitive and a global center of innovation and productivity. States have demonstrated significant commitment to this goal in their work leading the effort to develop college- and career-ready standards (the Common Core State Standards or CCSS).¹ The CCSS are a set of consistent, high-quality academic benchmarks that clearly define the knowledge and skills all students should master by the end of each school year in order to be on track for success in college and/or career. The standards were created through a state-led initiative and have been adopted by more than 40 states. These new standards are designed to be relevant in the real world, reflecting the knowledge and skills that young people need to be successful. When American students have the skills and knowledge needed in today's job market, communities will be stronger and more competitive in the global economy.

Setting clear, high, college- and career-ready standards is one piece of the puzzle. Assessments that accurately measure these standards and accountability systems that drive all students to college- and career-readiness and beyond help to complete the picture. In the absence of ESEA reauthorization, states need the ability to design new accountability systems that build upon the positive aspects of existing accountability systems, yet go beyond the limitations of NCLB to connect with other education reforms and ensure that all students are prepared for college and career upon graduating from high school.

V. How is ESEA flexibility an improvement upon NCLB?

States have demonstrated strong leadership by putting forth comprehensive reform plans that move toward the goal of providing every student in the nation with a high-quality education that prepares them to succeed in their future endeavors. Each state is creating a system that meets its unique needs while maintaining a high bar for accountability.

VI. What happens if Kentucky loses its waiver and goes back to NCLB?

A. Accountability implications

If Kentucky loses its ESEA flexibility, the state and local school districts must immediately resume compliance with the requirements of current law (NCLB). If that were to happen, Kentucky would return to making annual yearly performance determinations, known as Adequate Yearly Progress (AYP), for schools and districts, using only proficiency as the indicator. Under NCLB, the goal for schools and districts is that all students will demonstrate proficiency in reading/language arts and mathematics. If even one of a school's targets is not met, the school is identified publicly as failing. Schools that are identified as failing are required to implement a series of interventions that increase in severity over several years. Without the ESEA waiver, districts would be required to transfer students upon parent request.

¹ While 45 states, the District of Columbia, four territories, and the Department of Defense Education Activity have adopted CCSS, those that have not are also moving toward ensuring that their standards align with college- and career-ready expectations.

If Kentucky were to return to NCLB, 100 percent of its schools and districts would be identified as failing. Rather than using state and local discretion to determine how to best help these schools, the state would be required to take certain actions, regardless of why a school is having trouble. In addition to having an impact on the effectiveness of Kentucky's use of resources (time, personnel and money), this vast over-identification of failing schools can lead people to disregard the accountability system, rendering the whole thing meaningless.

Consistent with Principle 2 of the ESEA waiver, Kentucky has implemented regulations and statutes that have allowed us to build an aligned system of accountability, using multiple measures, which is focused on college- and career-readiness for all students. All Priority and Focus Schools and Districts have an improvement plan aligned with Kentucky Board of Education (KBE) strategic goals. Under NCLB, to which Kentucky would return with the loss of the waiver, the accountability system would be based solely upon meeting or failing to meet AYP, with no differentiation between the lowest performing schools and those needing help in only a few areas.

Kentucky would have to operate under a dual system of accountability, responding to federal AYP requirements while also moving forward with Kentucky's Unbridled Learning system based on the Kentucky General Assembly's Senate Bill 1. This would cause undue confusion for parents, students, and educators, and would result in significant inefficiencies. For example, schools could be labeled as failing under federal benchmarks, but successful under state benchmarks.

With the loss of the ESEA waiver, accountability model data would need to be re-built, and time and effort would need to be invested to recreate the NCLB accountability model. Without the ESEA waiver, Kentucky's new assessment system, based on the CCSS, would have to be used for the NCLB model. We would have to adjust the trend line due to the lower performance of students on the CCSS-based test; however, the goal of having all students proficient by spring 2014 under NCLB would still be in place.

B. Financial implications

With loss of the ESEA waiver, districts may have to reserve up to 30 percent of their Title I, Part A allocation to provide mandatory professional development, supplemental educational services (SES), and public school choice. This would be dependent on each district's and schools' accountability designations. Through the ESEA waiver period, funds have been freed from these requirements, allowing districts to serve more schools with better quality academic services in order to meet the needs of students.

In addition, under ESEA flexibility, states were given an opportunity to waive restrictions on the activities provided by a community learning center under the 21st Century Community Learning Centers (21st CCLC) program requiring that activities are provided only during non-school hours or periods when school is not in session (i.e., before and after school or during summer recess). Kentucky sought a waiver so that 21st CCLC funds may be used to support expanded learning time during the school day in addition to activities during non-school hours or periods when

school is not in session. If the state's waiver is not renewed, this flexibility would no longer be available and the state would be required to abide by the previous restrictions.

Without the ESEA waiver, districts will have to implement SES with state-approved providers. This requires burdensome contract development with each of the providers serving students within the district, and identification of and marketing to eligible students.

With a return to NCLB, districts will have to reserve another portion of their allocations, up to 1 percent, if they are in corrective action.

Without the ESEA waiver, for districts in improvement, the percentage of Title II, Part A funds available to be transferred into Title I, Part A would be reduced from up to 100 percent to no more than 50 percent. Districts have used this flexibility to serve more schools, providing them with better quality academic services. This has allowed districts to use Title II funds more flexibly by implementing allowable activities under Title I. In addition, districts will have to go through the burdensome process of notifying the state 30 days prior to making a transfer of funds to a different category of need.

Under NCLB, the hiring of paraprofessionals with Title I, Part A funds will be restricted for LEAs that miss AYP and fail to make progress toward reaching annual objectives for highly qualified teachers.

With the loss of the ESEA waiver, spending requirements for Rural and Low-Income Schools funding will be prescriptively tied to accountability, and will have to be used for improvement activities, dependent on an LEA's accountability designation. Districts would also face funding limits and mandated Extended School Services (ESS).

VII. Where does Kentucky go from here?

Approved ESEA flexibility is not the end; it is just the next phase in a comprehensive approach to reform. States developed and are implementing well thought out and rigorous accountability systems. States recognize, however, that with this opportunity comes a responsibility to continue to evaluate whether these systems are driving increased student achievement. States remain committed to a process of innovation, evaluation, and continuous improvement over time, with many states explicitly addressing a process of continuous improvement in their waivers. Ultimately, states need an updated and improved federal law that builds on state leadership and provides the stability states need to fully realize the potential of their reform efforts.

Commitment to Innovation, Evaluation, and Continuous improvement of Next-Generation Accountability Systems

A next-generation accountability system should promote, not hinder, innovation in teaching and learning and school models, as well as in accountability itself. States should continuously evaluate and improve the elements of their next-generation accountability systems for maximum effectiveness. Continuous improvement routines, within which a state can select from a range of research, evaluation, and measurement options, enrich the validity, reliability, and efficacy of the accountability system at driving progress on state

goals and identifying any unintended consequences. While we know several actions that will strengthen current accountability systems, we do not yet know what works best to drive continuous growth across all schools and districts. It will take openness to innovation, with rigorous evaluation, to drive continuous improvement and the kind of dramatic improvements in student achievement that we need at all levels.

Continuous improvement of next-generation state accountability systems should:

- **Build in evaluation of the accountability system as a whole as well as each individual component.** As stated earlier, each component of the framework is important both individually and as part of the whole. Therefore, when considering evaluation of the accountability system, each component should be reviewed individually and as part of the whole. Questions to consider include: whether the system as a whole is effectively serving as the core organizing strategy in meeting the state's student achievement goals; whether each component contributes and works in tandem with the other component; and whether the feedback received from users of the accountability system, particularly educators, is positive.
- **Establish expectations for review and improvement.** These should be articulated early in the development of the system and be used throughout the implementation process.
- **Include a focus on unintended consequences.** State accountability systems should be designed to spur innovation and improvement in education practice – at a school level and beyond. States should be deliberate about monitoring the impact of innovation and continual improvement efforts on teaching and learning in order to prevent barriers to greater reform.
- **Make the evaluations and reviews transparent.** Rather than confining the results of the continuous improvement evaluations to SEA leaders and staff, disseminate the results more broadly so that all stakeholders understand how the accountability system is working or not and why changes may be necessary.
- **Act on the results.** Once a state knows what needs to be enhanced or changed, leaders must exercise the political will to do so. Actors within the educational system must adapt to an environment that continuously innovates and improves for greater levels of student achievement.

Request for feedback as Kentucky applies for renewal of its ESEA waiver

Kentucky is planning to apply for renewal of its ESEA waiver during Phase C (February 12–21, 2014) of the times being offered by the United States Department of Education (USED) for this purpose. The Kentucky Department of Education (KDE) is seeking feedback from all constituencies to consider as the renewal application is drafted.

In order to provide KDE with constructive feedback, it is suggested that constituents first review this white paper followed by review of Kentucky's currently approved ESEA waiver. The approved waiver for Principles 1 and 2 can be located at the following link: <http://education.ky.gov/comm/UL/Documents/Revised%20Approved%20KY%20ESEA%20flexibility%20waiver%20Sept%2028%202012%20final%20version%20mam.pdf>. A revised version of Kentucky's Principle 3 section of the waiver request is under review by the United States Department of Education and can be found at:

<http://education.ky.gov/comm/UL/Documents/PRINCIPLE%203%20mam%201%204%2013%20changes%20accepted.pdf>. Be aware, however, that the Kentucky Department of Education (KDE) has applied to USED for flexibility of the timeline described in its Principle 3 section to be changed to:

- 2013-14 Statewide implementation via a statewide pilot in every district within a specified number of schools
- 2014-15 Full statewide implementation in every school (will not be used for personnel decisions or state accountability)
- 2015-16 Full statewide implementation (used to make personnel decisions and included in state accountability)

Please send all feedback to assist KDE with developing its ESEA waiver renewal submission via mail or e-mail to:

**Mary Ann Miller, Policy Advisor
Kentucky Department of Education
500 Mero Street
1st Floor, Capital Plaza Tower
Frankfort, KY 40610
maryann.miller@education.ky.gov**

Note: White paper adapted from: CCSSO's Roadmap for Next-Generation State Accountability Systems available at www.ccsso.org/accountability.